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paragraphs (e)(5) and (e)(6), respectively, of this section, in substantially the form contained in the applicable appendices to this subpart.

(g) *RUS acknowledgment.* Within 5 business days of receipt of the completed certifications and any other information required under this section, RUS will review the information and provide written acknowledgment to the borrower and the private lender of its qualification for an automatic lien accommodation. Upon receipt of the acknowledgment, the borrower may execute the private lender notes.

(h) *Supplemental mortgage.* If the private lender determines that a supplemental mortgage is required to secure the private lender notes on a *pari passu* or pro-rata basis with all other notes secured under the Government mortgage, the private lender may prepare the supplemental mortgage using the form attached as Appendix F to this subpart or the borrower may request RUS to prepare such supplemental mortgage in accordance with the following procedures:

(1) The private lender preparing the supplemental mortgage shall execute and forward the completed document to RUS. Upon ascertaining the correctness of the form and the information concerning RUS, RUS will execute and forward the supplemental mortgage to the borrower.

(2) When requested by the borrower, RUS will expeditiously prepare the supplemental mortgage, using the form in Appendix F to this subpart, upon submission by the private lender of:

- (i) The name of the private lender;
- (ii) The Property Schedule for inclusion as supplemental mortgage Schedule B, containing legally sufficient description of all real property owned by the borrower; and
- (iii) The amount of the private lender note.

(3) The government is not responsible for ensuring that the supplemental mortgage has been executed by all parties and is a valid and binding instrument enforceable in accordance with its terms, and recorded and filed in accordance with applicable law. If the private lender determines that additional security instruments or other documents are required or that RUS

must take additional actions to secure the private lender notes under the mortgage, the private lender shall follow the procedures established in §§1744.40 or 1744.50, as appropriate. Except for the actions of the government expressly established in §1744.40, the government undertakes no obligation to effectuate an automatic lien accommodation. When processing of the supplemental mortgage has been completed to the satisfaction of the private lender, the borrower shall provide RUS with the following:

(i) A fully executed counterpart of the supplemental mortgage, including all signatures, seals, and acknowledgments; and

(ii) Copies of all opinions rendered by borrower's counsel to the private lender.

(i) *Other approvals.* (1) The borrower is responsible for meeting all requirements necessary to issue private lender notes and to accommodate the lien of the Government mortgage to secure the private lender notes including, but not limited to, those of the private lender, of any other mortgagees secured under the existing RUS mortgage, and of any governmental entities with jurisdiction over the issuance of notes or the execution and delivery of the supplemental mortgage.

(2) To the extent that the borrower's existing mortgage requires RUS approval before the borrower can make an investment in an affiliated company, approval is hereby given for all investments made in affiliated companies with the proceeds of private lender notes qualifying for an automatic lien accommodation under paragraph (e) of this section. Any reference to an approval by RUS under the mortgage shall apply only to the rights of RUS and not to any other party.

[66 FR 41760, Aug. 9, 2001]

§ 1744.40 Act purposes.

(a) Borrowers are encouraged to submit requests for accommodation of the Government's lien on the borrower's system in order to facilitate obtaining financing from private lenders for purposes provided in the RE Act.

(b) The Administrator will consider requests for the subordination of the Government's lien on after-acquired

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property which will enable borrowers to obtain financing from private lenders for purposes provided in the Act: Provided, however, that property integral to the operation of projects financed with loans made or guaranteed by RUS shall be financed with funds obtained through lien accommodations instead of lien subordinations, unless the Administrator determines that it is in the Government's interest to do otherwise.

[51 FR 32430, Sept. 12, 1986, unless otherwise noted. Redesignated at 55 FR 39396, Sept. 27, 1990. And further redesignated at 66 FR 41760, Aug. 9, 2001]

§§ 1744.41-1744.49 [Reserved]

§ 1744.50 Non-Act purposes.

(a) The Administrator will consider requests for the accommodation of the Government's lien on the borrower's system or the subordination of the Government's lien on after-acquired property which will enable the borrowers to obtain financing from private lenders for the purpose of providing new telecommunication services which may not be eligible for financing under the Act if the Administrator is satisfied that:

(1) The borrower will have the ability to repay its existing and proposed indebtedness;

(2) The security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination; and

(3) Approval of the request is in the interests of the Government with respect to the financial soundness of the borrower and other matters, such as assuring that the borrower's system is constructed cost-effectively using sound engineering practices.

(b) In determining that the security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination the Administrator will consider, among other matters, when applicable, the following:

(1) Market forecasts for the project;

(2) Projected revenues, expenses and net income of the borrower's existing system and the project;

(3) Maximum debt service on indebtedness of both the borrower's system and the project;

(4) Projected rate of return on the borrower's investment in the project;

(5) Fair market value of property acquired by the borrower as part of the project;

(6) Impact of the project on the ratio of the borrower's secured debt to assets;

(7) Projected growth in borrower's system and project equity; and

(8) Amount of funds available for plant additions, replacements and other similar costs of the system and the project.

(c) In determining whether the accommodation or subordination is in the interests of the Government, the Administrator may consider, among other matters, whether the project will improve the borrower's financial strength and the assurance of repayment of Government debt.

[51 FR 32430, Sept. 12, 1986. Redesignated at 55 FR 39396, Sept. 27, 1990, and amended at 59 FR 43716, Aug. 25, 1994. Further redesignated at 66 FR 41760, Aug. 9, 2001 and amended at 66 FR 41763, Aug. 9, 2001]

§§ 1744.51-1744.54 [Reserved]

§ 1744.55 Application procedures.

(a) Requests for information regarding applications for lien accommodations or subordination under this part should be addressed to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC 20250-1590.

(b) An application for a lien accommodation or subordination shall include the following supporting information:

(1) A board Resolution from the applicant requesting the lien accommodation or subordination and stating the general purpose for which the funds from the private lender will be used, the proposed amount of the loan, and the proposed terms and conditions of the loan;

(2) An opinion from counsel representing the applicant that the applicant has the authority under its articles of incorporation, bylaws, and under applicable state law to undertake the project;